

Notic of Allowability

Applicati n N .

09/083,793

Examiner

Stacy B. Chen

Applicant(s)

MURPHY ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/21/06.
2. ☒ The allowed claim(s) is/are 144-155, 157-190, 192-215.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachm nt(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Linda Parker on September 21, 2006.

The application has been amended as follows:

IN THE SPECIFICATION:

Page 17, line 23, delete "Figure 16", and insert --Figure 17--.

Examiner's Comment

Applicant's after-final amendment filed on August 21, 2006 is acknowledged and entered.

Claims 144-155, 157-190 and 192-215 are allowable.

The amendment to the specification was made in order to correct a typographical error.

The rejection of claims 146-155, 157-190 and 192-215 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, is withdrawn in view of Applicant's response filed August 21, 2006. The Office confirms that some of the claims were rejected in error because the claims did not depend from the claims reciting the language in question.

The rejection of claims 166-171, 174-178, 201-206, 209-215 under 35 U.S.C. 103(a) as being unpatentable over Belshe is withdrawn in view of Applicant's persuasive arguments. The

Art Unit: 1648

limitation regarding the heterologous antigenic determinant comprising a transcription unit (that encodes an open reading frame) inserted between a gene start and a gene end sequence of the PIV background genome is not obvious over Belshe because Belshe does not teach or fairly suggest this aspect of the invention.

The provisional rejection of claims 144-155, 157-190 and 192-215 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 53-85 of copending Application No. 09/458,813, is withdrawn in view of the terminal disclaimer filed August 21, 2006.

The provisional rejection of claims 144-155, 157-190 and 192-215 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 and 46-74 of copending Application No. 09/459,062, is withdrawn in view of the terminal disclaimer filed August 21, 2006.

The provisional rejection of claims 144-155, 157-190 and 192-215 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 85, 88-92, 94-96, 98, 99, 101, 104, 107, 108, 113-117, 119, 122-126, 128-130, 132, 133, 135, 140, 141, 146-152, 154, 157, 159, 162 and 163 of copending Application No. 09/586,479, is withdrawn in view of the terminal disclaimer filed August 21, 2006.

The provisional rejection of claims 144-155, 157-190 and 192-215 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 180-222 of copending Application No. 09/733,692, is withdrawn in view of the terminal disclaimer filed August 21, 2006.

Art Unit: 1648

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James C. Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Stacy B. Chen 9/22/06
STACY B. CHEN
PRIMARY EXAMINER